Expert Admissibility in the Circuit Courts: Before and After the 2023 Amendment

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An amendment to Federal Rule of Evidence 702 took effect on December 1, 2023, clarifying the standards that federal courts must use to determine the admissibility of expert evidence. Subsequent case law demonstrates that federal circuit courts are changing practice in accordance with the amendment, as was intended.

Circuit	Admissibility standards before FRE 702 amendment	Admissibility standards after FRE 702 amendment
Fifth Circuit	"Questions relating to the bases and sources of an expert's opinions affecting the weight to be assigned that opinion rather than its admissibility" and so should be left for the jury's consideration."[1]	"There is no question that Federal Rule of Evidence 702 governs the admissibility of expert testimony," and under that rule, "expert testimony may not be admitted unless the proponent demonstrates to the court that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the rule." The trial court must ensure that the proffered opinions "reflect a reliable application of principles and methods to the facts of the case."[2]
Sixth Circuit	"[M]ere weaknesses in the factual basis of an expert witness' opinion … bear on the weight of the evidence rather than on its admissibility." *In re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 530 (6th Cir. 2008). "[I]t is up to opposing counsel to inquire into the expert's factual basis."[3]	"District courts "ha[ve] an independent duty to ensure that all experts" meet the Rule 702 admissibility prerequisites. The 2023 amendment to Rule 702 was "drafted to correct some court decisions incorrectly holding 'that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility.'"[4] Rule 702 "only allows an expert to testify when" the proponent establishes all of the enumerated elements.[5]

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Eighth Circuit	"The Eighth Circuit "stated numerous times that, '[a]s a general rule, the factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility.'" Eighth Circuit cases "call[ed] for the liberal admission of expert testimony."[6] "Only if an expert's opinion is so fundamentally unsupported that it can offer no assistance to the jury must such testimony be excluded." "Doubts regarding whether an expert's testimony will be useful should generally be resolved in favor of admissibility."[7]	"The 2023 amendment to Rule 702 was deemed "necessary because many courts had incorrectly held 'that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility.'" Proffered opinions "lack reliability" and are properly excluded where they lack an adequate basis."[8]
Ninth Circuit	"Where experts' opinions "are not the 'junk science' Rule 702 was meant to exclude, . . . the interests of justice favor leaving difficult issues in the hands of the jury and relying on the safeguards of the adversary system … to attack 'shaky but admissible' evidence." Rule 702 "should be applied with a 'liberal thrust' favoring admission."[9]	"Rule 702 "expressly require[s] a proponent of expert testimony to 'demonstrate[ ] to the court that it is more likely than not that the four admissibility requirements are satisfied." When applying the standard, "challenges to an expert's opinion go to the weight of the evidence only if a court first finds it more likely than not that an expert has a sufficient basis to support an opinion." If the proponent "fail[s] to establish by a preponderance of the evidence that [the expert's] conclusion was based on sufficient facts or data," the opinions are properly excluded under Rule 702(b). The district court "cannot abdicate its role as gatekeeper" nor "delegat[e] that role to the jury." Prior holdings that Rule 702 should be applied "with a liberal thrust" should "not be understood to suggest a presumption of admission" because "[t]here is no such presumption, as a proponent of expert testimony must always establish the admissibility requirements of Rule 702 by a preponderance of the evidence."[10] "Rule 702 contemplates that district courts may exclude opinion testimony where the expert's "application of those methods" is unreliable."[11]

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Tenth Circuit	"[D]oubts concerning the sufficiency of the factual basis to support [the expert's] opinion go to its weight, and not to its admissibility."[12]	"Experts that lack "'sufficient facts or data' on which to base their opinions" are properly excluded pursuant to Rule 702(b)."[13]
Federal Circuit	"[T]he soundness of the factual underpinnings of the expert's analysis and the correctness of the expert's conclusions based on that analysis are factual matters to be determined by the trier of fact."[14]	"[T]he gatekeeping function of the court" requires it "to ensure that there are sufficient facts or data for [the expert's] testimony." When that factual basis is found inadequate, the opinions are "unreliable and therefore inadmissible under Rule 702." Rule 702 was amended in 2023 because "many courts have held that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a)."[15]

Endnotes

1 Smith v. Starr Indem. & Liab. Co., 807 F. App'x 299, 302 (5th Cir. 2020) (citing Viterbo v. Dow Chem. Co., 826 F.2d 420, 422 (5th Cir. 1987)); Puga v. RCX Sols., Inc., 922 F.3d 285, 294 (5th Cir. 2019).
2 Nairne v. Landry, F.4th , No. 24-30115, 2025 WL 2355524, at *16 & n.20 (5th Cir. Aug. 14, 2025); Harris v. Fedex Corp. Svcs., Inc., 92 F.4th 286, 303 (5th Cir. Feb. 1, 2024).
3 United States v. L.E. Cooke Co., 991 F.2d 336, 342 (6th Cir. 1993).
4 In re Onglyza (Saxagliptin) and Kombiglyze (Saxagliptin and Metformin) Prods. Liab. Litig., 93 F.4th 339, 347, 348 n.7 (6th Cir. Feb. 13, 2024) (quoting Fed. R. Evid. 702 advisory committee's note to 2023 amendment).
5 Baker v. Blackhawk Mining, LLC, 141 F.4th 760, 766 (6th Cir. 2025).
6 In re Bair Hugger Forced Air Warming Devices Prod. Liab. Litig., 9 F.4th 768, 778 (8th Cir. 2021) (citing United States v. Coutentos, 651 F.3d 809, 820 (8th Cir. 2011)).
7 United States v. Finch, 630 F.3d 1057, 1062 (8th Cir. 2011).
8 Sprafka v. Medical Device Bus. Svcs., 139 F.4th 656, 660 & n.3 (8th Cir. June 4, 2025) (citing Fed. R. Evid. 702 advisory committee's note to 2023 amendment).
9 *Wendell v. GlaxoSmithKline LLC*, 858 F.3d 1227, 1232, 1237 (9th Cir. 2017).
10 *Engilis v. Monsanto Co.*, ___ F.4th ___, 2025 WL 2315898, at *5, *6, *10 (9th Cir. Aug. 12, 2025).
11 *Bulone v. Monsanto Co.*, No. 24-4241, 2025 WL 2730843, at *2 (Sept. 25, 2025) (emphasis original).
12 *Werth v. Makita Elec. Works, Ltd.*, 950 F.2d 643, 654 (10th Cir. 1991); see also *Gomez v. Martin Marietta Corp.*, 50 F.3d 1511, 1519 (10th Cir. 1995) ("weaknesses in the data upon which [the] expert relied go to the weight").
13 *Herman v. Sig Sauer Inc.*, No. 23-6136, 2025 WL 1672350, at *5, *6 (10th Cir. June 13, 2025).
14 *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1314 (Fed. Cir. 2014), *overruled on other grounds by Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015) (*quoting Smith v. Ford Motor Co.*, 215 F.3d 713, 718 (7th Cir. 2000).
15 *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333, 1339, 1343, (Fed. Cir. May 21, 2025) (*en banc*) (quoting Fed. R. Evid. 702 advisory committee's note to 2023 amendment).